

HARRIS COUNTY

PUBLIC INFRASTRUCTURE DEPARTMENT ENGINEERING DIVISION

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22 November 2006

Mr. David B. Olson
CECW-OR/MVD
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314-1000

**SUBJECT: Docket Number COE-2006-0005 (ZRIN 0710-ZA02)
Comments on USACE Proposal to Reissue and Modify Nationwide
Permits**

Dear Sir:

The Harris County Public Infrastructure Department – Engineering Division (“Harris County”) respectfully submits comments on the U. S. Department of the Army, Corps of Engineers’ (USACE) proposed re-issuance and modification of the nationwide permits (NWP), general conditions, and associated definitions (docket number COE-2006-0005, ZRIN 0710-ZA02). Harris County is commenting on the proposed nationwide permits because we:

- Are often applicants (on behalf of the four County precincts) to the USACE on road, bridge, park, drainage and facility projects,
- Have significant interest in protecting Harris County’s infrastructure from impacts that may occur from adjacent development, and
- Strive to comply with requirements under Harris County’s NPDES municipal separate storm sewer system permit.

For these reasons, please consider the following comments from this office:

NWP 5: Scientific Measurement Devices

Harris County recently applied through a preconstruction notification for coverage under NWP 5 for the installation of a control valve within a minor tributary for the purpose of monitoring the quality of storm water runoff from a site that was a closed landfill. We agree that a preconstruction notification as a requirement for coverage under this nationwide permit should not be required for local, federal, and state agencies, as well as the scientific community, who are seeking to improve water quality and the environment via projects such as this.

NWP 13: Bank Stabilization

The inclusion of minimal impacts to jurisdictional wetlands to NWP 13 provides for a better utilization of this nationwide permit for projects associated with erosion prevention, minor slope repairs, and stabilization of shorelines where a minimal fringe

wetland habitat is present that is of low quality due to on-going erosion or instability. These fringe areas usually last as long as the next flooding event, due to scour, or the next storm that produces erosive wave action.

It is recommended to clarify under NWP 13 how the cumulative impacts are to be calculated. For example, when broken riprap is placed along both slopes of a channel and along the bottom of the channel, it is Harris County's understanding that the total length of stream impacts would require measuring along both sides of the stream bank where the riprap will be placed and then adding these two quantities to determine the cumulative impact; it would not be correct in using a measurement along the centerline of the channel.

NWP 14 Linear Transportation Projects

When Harris County constructs a road & bridge project, impacts to waters of the United States may be associated with

- The roadway crossing a jurisdictional wetland,
- Bank stabilization, broken riprap or sloped paving, under a bridge at a stream crossing or drainage channel,
- Minor regrading of a stream or drainage channel to meet flow lines under the bridge,
- Storm sewer outfalls, with broken riprap for erosion protection, into a stream or drainage channel,
- Pilings, drilled piers, and footings within a stream or drainage channel for the bridge structure, and
- Utilities, such as water, sewer, telecommunication cables, etc. crossing a jurisdictional wetland or water.

Please clarify which activities may be included as "activities required for construction, expansion, modification, or improvement" of linear transportation projects under a NWP 14. Are all the features associated with a linear project, such as those listed above, included in NWP 14 (roads, bridge structures, drainage ditches, utility lines, storm sewer outfalls, etc.), even though some of these features have their own nationwide permits? For example, there are nationwide permits for NWP 7 Outfall Structures, NWP 12-Utility Line Activity, NWP 41-Reshaping Existing Drainage Ditches, etc.

Under NWP 14, it also would be useful if clarification was provided regarding "stream crossings" and "single and complete projects". For example, along one roadway project in which two streams will be crossed, could the two stream crossings be considered two single and complete projects, allowing for two NWP 14 applications for each of their associated impacts? Conversely, would the entire roadway project be considered one complete project with impacts from both stream crossings being considered "cumulative", thereby allowing only one NWP 14 application? If this is at the discretion of the District Engineer, then please include this language in the nationwide permits, accordingly.

NWP 30: Moist Soil Management for Wildlife

Removing the restriction that currently limits the use of this nationwide permit to government-owned or managed property, thereby also allowing private land owners to utilize this nationwide permit to improve jurisdictional wetlands and waters for the purpose of better management of wildlife habitat and feeding areas, is beneficial as it encourages private efforts to conserve the nation's, native wildlife populations.

NWP 32: Completed Enforcement Actions

Under Part (i)(a), consideration should be given to allow the District Engineer discretion in allowing the use of NWP 32 for completed enforcement actions in which there is an exceedance of the 5 acres of non-tidal waters or 1 acre of tidal waters threshold. This will allow the applicant to proceed, in a more timely manner, with the compensatory mitigation project, thereby reducing additional temporal losses to waters of the U.S.

NWP 33: Temporary Construction, Access, and Dewatering

During the construction of many of Harris County's road, bridge, facility, drainage, and park projects, temporary dewatering activities are required. The placement of broken riprap or sloped paving within natural streams or drainage channels, for erosion control under bridge structures and at storm sewer outfall pipes require the construction of temporary cofferdams in order to dewater. Temporary cofferdams are also required when boat ramps at County parks are constructed or repaired. Under these circumstances, Harris County seeks coverage under a Department of the Army permit for permanent fill, as well as temporary fill.

Harris County has looked at various methods of dewatering to minimize the impacts to waters of the U.S., including the use of "water inflated cofferdams"; please see the attachment for an example of this type of temporary control. These water filled barriers can be placed within the stream for a relatively short period of time, generally a day or two, until the placement of riprap, concrete, or other such material, has been completed; the barriers are then removed and the hydrology is restored to the area. Harris County recommends that this type of best management practice for dewatering activities be considered "de minimus" and be exempted from pre-construction notification requirements under NWP 33. Including maximum temporal thresholds, such as 48 hours, and maximum acreage and/or volumetric impacts, such as those under NWP 18 Minor Discharges, can be the criteria in defining "de minimus" impacts. General Conditions can be referenced to address water quality when discharging the water used within the barrier, when the barrier is removed.

Regarding temporary access across jurisdictional wetlands and waters, please consider adding an exemption to the preconstruction notification requirement if the

temporary fill is a mat, in lieu of dirt or a stabilized material, if there is a temporal limit, such as 48 hours, and if the mats are not placed in tidal waters, where the ecosystem is more sensitive to the ebb and flow of the tide. An exemption to the preconstruction notification should also be considered for temporary access if the fill is “de minimus”, such as the thresholds shown in NWP Minor Discharges.

NWP 36: Boat Ramps

Harris County appreciates the flexibility given to the District Engineer to waive the 50 cubic yard and 20 foot width threshold limits on NWP 36, when the applicant provides a preconstruction notification and minimal impacts to the environment are expected. For a smaller boat ramp, this discretion will allow the applicant to properly design the ramp with considerations for the environment, safety, topographic features, compliance with the Americans With Disabilities Act, and long term maintenance.

NWP 39: Commercial and Institutional Development and NWP 29: Residential Developments

It is appropriate to remove “residential development” activities from the existing NWP 39, including them with “single-family housing” activities, and renaming NWP 29 to be “Residential Development”.

Removing the exemption of ephemeral streams from the threshold calculations within NWP 29 and NWP 39 will help address the “no net loss” of waters of the U.S. policy. In addition to intermittent and perennial streams, ephemeral streams are important in improving local and regional water quality, provide storage capacity during storm events, and are valuable ecosystems to wildlife.

Under the current nationwide permits, buffers are mentioned for open waters and streams; however, there should be additional clarification as to the size of the buffer that should be required around each of the various types of streams: perennial, intermittent, and ephemeral. Buffers along streams can be paramount in reducing flooding of adjacent property owners and provide habitat for wildlife along the streams. Waters of the U.S. are impaired when wetland or upland buffers are not provided. The goal of “swimmable and fishable” for streams, the mandates of Total Maximum Daily Loads (TMDLs) for stream segments, may not be fully achievable, if adequate buffers are not considered at every opportunity. Although the definition of an adequate buffer can be subjective, defining a minimum buffer criteria within the nationwide permits would be a useful tool. Buffers are currently at the discretion of the District Engineer and often are not mandated during the application process.

General Conditions

Within a few of the existing nationwide permits, language regarding the thresholds and compensatory mitigation has been removed and reference is made to the General Conditions. There is concern that misinterpretations of the specific nationwide permits may occur in doing so; it is recommended to keep the clarification, specific to thresholds and mitigation, within each of the applicable nationwide permits.

Please feel free to contact this office at (713) 755-3428 should you have any questions regarding Harris County's comments. Thank you for consideration.

Sincerely,



Teresa L. Beavers, P.E.
Manager of Environmental
Services Section

TLB/DR/jlm

Attachment

cc: Jackie L. Freeman, HCPID
Deborah M. Vaughn, HCPID
Frank Ma, HCPID
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Central File